(1) 83-1901

No.

Office - Supreme Court, U.S.
FILED
MAY 10 1984
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TEAMSTERS FREIGHT LOCAL UNION NO. 480
Petitioner,

vs.

RYDER TRUCK LINES, INC.
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH JUDICIAL CIRCUIT

CECIL D. BRANSTETTER
R. JAN JENNINGS
Branstetter, Kilgore & Stranch
200 Church Street, 4th Floor
P. O. Box 3079
Nashville, TN 37219-0079
Attorneys for Petitioners

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

60 p

QUESTIONS PRESENTED FOR REVIEW

I. The decision of the Court of Appeals undermines and ignores central provisions of the United States Constitution.

II. The decision of the Court of Appeals conflicts with decisions of this Court and our national labor policy as expressed by the National Labor Relations Board.

III. The law is unclear as to whether a union may be held liable in damages for breach of contract when its members cease work to peacefully protest a dispute which cannot be remedied under the contractual grievance procedure.

IV. The decision of the Court of Appeals is void because Senior Circuit Judge Peck, who authored the en banc opinion, was ineligible to participate in the en banc deliberations.

TABLE OF CONTENTS

	Page
Petition for a Writ of Certiorari	1
Opinions Below	1
Jurisdiction	2
Constitutional and Statutory Provisions Involved	2
Statement of the Case	2
Reasons for Granting the Writ	4
I. The decision of the Court of Appeals undermines and ignores central provisions of the United States Constitution	4
II. The decision of the Court of Appeals conflicts with decisions of this Court and our national labor policy as expressed by the National Labor Relations Board	5
III. The law is unclear as to whether a union may be held liable in damages for breach of contract when its members cease work to peacefully protest a dispute which cannot be remedied under the contractual grievance procedure	8
IV. The decision of the Court of Appeals is void because Senior Circuit Judge Peck, who authored the en banc opinion, was ineligible to participate in the en banc deliberations	9
Conclusion	10
Certificate of Service	11

TABLE OF CONTENTS OF APPENDIX

Opinions Cited for Review

Ryder Truck Lines, Inc. v. Teamsters Freight Local Union No. 480, et al, 705 F.2d 851 (1983) A-1

Ryder Truck Lines, Inc. v. Teamsters Freight Local Union No. 480, et al, 727 F.2d 594 (1984) A-22

U.S. Constitution:

First Amendment A-41

Fourth Amendment A-41

Statutes:

28 U.S.C. §46(c) A-41

28 U.S.C. §2077(a) A-42

29 U.S.C. §185(a) A-42

Rules:

Rule 14, Sixth Circuit A-42

TABLE OF AUTHORITIES

Cases Page

American Construction Co. v. Jacksonville, T. & K.W.R. Co., 148 U.S. 486 10

Barrentine v. Arkansas-Best Freight System, 450 U.S. 728 5

Boy's Markets, Inc. v. Retail Clerks, 398 U.S. 235 5,7

Buffalo Forge Co. v. Steelworkers, 428 U.S. 397 5,6

Carroll v. Commissioners of Princess Anne, 393 U.S. 175 5

D. H. Overmyer Co. v. Frick Co., 405 U.S. 174 4

Delaware Coca-Cola Bottling Co. v. General Teamsters Local 326, 624 F.2d 1182 (3rd Cir. 1980) 9

Emporium Capwell Co. v. Community Organization, 420 U.S. 50 5

Emspak v. U.S., 349 U.S. 190 4

Gary Hobart Water Corp. v. NLRB, 210 NLRB No. 87 (1974, enf'd. 511 F.2d 284 (7th Cir. 1975) cert. den. 423 U.S. 925 6

Gateway Coal Co. v. Mineworkers, 414 U.S. 368 7

Hague v. CIO, 307 U.S. 496 4

Hampton Roads Shipping v. Intern. Longshoremen's 631 F.2d 282,(4th Cir. 1980), cert. den. 449 U.S. 1120 (1982) 9

Hyster Co. v. Independent Towing & Lifting Mach. Assn., 519 F.2d 89 (7th Cir. 1975), cert. den. 428 U.S. 910 (1976) 9

Jacksonville Bulk Terminal, Inc. v. Longshoremen, 457 U.S. 702 6,8

Johnson v. Zerbst, 304 U.S. 458 4

Mastro Plastics Corp. v. NLRB, 350 U.S. 270 5

Monroe v. Pape, 365 U.S. 167 4

Pacemaker Yacht Co., 253 NLRB No. 95, enf. den. on other grounds, 663 F.2d 455 (3rd Cir. 1981) 6

Ryder Truck Lines, Inc. v. Teamsters Freight Local Union No. 480:

705 F.2d 851 1,3

710 F.2d 233 3

727 F.2d 594 1,7,8

Suburban Transit Corp., 218 NLRB No. 185, enf. den. on other grounds 536 F.2d 1018 (3rd Cir. 1976) ... 6

Thomas v. Collins, 323 U.S. 516 4

Thornhill v. Alabama, 310 U.S. 88 4

United States v. American-Foreign S.S. Corp., 363 U.S. 685 10

United Steelworkers, etc. v. Fort Pitt Steel, etc., 635 F.2d 1071 (3rd Cir. 1980), cert. den. 451 U.S. 985 (1981) 9

U. S. Constitution

First Amendment 2

Fourth Amendment 2

Statutes

28 U.S.C. §46(c) 9

29 U.S.C. §185(a) 2,6,8

28 U.S.C. §1254(1) 2

28 U.S.C. §2077(a) 10

Rules

Rule 2(3), Third Circuit 9

Rule 14, Sixth Circuit 2,9

Rule 16(a), Eighth Circuit 9

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

TEAMSTERS FREIGHT LOCAL UNION NO. 480[1]
Petitioner,

vs.

RYDER TRUCK LINES, INC.
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH JUDICIAL CIRCUIT

Petitioner, Teamsters Freight Local Union No. 480 respectfully prays that a Writ of Certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Sixth Judicial Circuit entered on February 13, 1984.

OPINIONS BELOW

The en banc opinion of the United States Court of Appeals for the Sixth Judicial Circuit, 727 F.2d 594, reversed 705 F.2d 851. Both opinions appear in the appendix hereto.

---

[1] Other parties named as defendant in the trial court along with Local No. 480 were "Luther Watson; Frank Hopkins; Turner Brim; Clyde Powers; and its agents, servants, members and employees and all persons acting in concert with it and employees of Ryder Truck Lines, Inc., who act in concert with said named defendants".

JURISDICTION

The judgment of the Court of Appeals was decided and filed on February 13, 1984. This petition for certiorari was filed within 90 days of that date. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First and the Fourth Amendments to the United States Constitution, Section 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. §185(a), Rule 14 of the Sixth Circuit and pertinent provisions of the Judicial Code are set out fully in the Appendix.

STATEMENT OF THE CASE

After being subjected to racial epithets [get your black ass out of here] during an ordinary work place dispute occurring in St. Louis, two Nashville based members of Local 480 were arrested and incarcerated upon a warrant for trespassing obtained by Ryder's St. Louis personnel. Local 480 through its members immediately established a non-violent, peaceful picket line at Ryder's Nashville terminal and announced the resultant work stoppage would cease when the incarcerated members had been released from jail.

The following day, an ex parte injunction without findings of fact or any evidentiary showing of a dispute Ryder and Local 480 were required to resolve via arbitration was issued by the United States District Court, Middle District of Tennessee. Jurisdiction was invoked under 29 U.S.C. §185(a) and the injunction expressly prohibited "communications", "publicity", and "picketing or congregating in groups". Local 480's members obeyed the injunction upon notice of issuance, and following a subsequent bench trial Ryder was awarded a judgment of $26,238.50 against Local 480 for breach of the collec-

tive bargaining agreement, albeit without a factual finding of the reason for the work stoppage or a determination the dispute resultant from the arrests could have been rectified through the contractual grievance procedure.

The judgment was vacated on appeal, Senior Judge Peck dissenting, 705 F.2d 851 (6th Cir. 1983). The district court was directed to make specific findings of fact concerning the reason for the strike because "the arrest of employees is a matter which does not concern the contractual relationship of the parties, and cannot be resolved through the grievance procedure. Hence, if the work stoppage was caused by the arrest of union men, the strike was not illegal", *Id.* 857, Appendix pp. A-12,13.

A petition for rehearing en banc was granted, 710 F.2d 233, and a majority of the active circuit judges joined an opinion authored by Senior Judge Peck which affirmed the district court by concluding the reason for the strike was not "relevant", 727 F.2d at 598, Appendix p. A-29, as the collective bargaining contract was breached by the strike action "regardless of whether the underlying dispute is arbitrable, and because such a conclusion is consistent with federal labor policy". *Id.* 601, Appendix p. A-36.

REASONS FOR GRANTING THE WRIT

I. The Decision Of The Court Of Appeals Undermines Central Provisions Of The United States Constitution.

With conduct reminiscent of pre-revolutionary times, Ryder's St. Louis terminal dispatcher procured the arrest of two Local 480 members upon a baseless charge. Disregarding racial overtones, this action by Ryder was without justification or predicate except to bring additional pressure upon a work place dispute. Immediately following the arrest, Local 480 commenced a peaceful work stoppage at Ryder's Nashville terminal and made it clear a release of the members from jail would result in termination of the strike action.

Deprivation of the two union members' constitutional right to remain free from arrest, followed by a constitutionally protected peaceful protest of the arrest by other union members, elevated the work stoppage in Nashville far beyond considerations of mere contract law as applied to a collective bargaining agreement. Citizens of this nation enjoy an absolute immunity against "unreasonable" arrest and seizure of their person by virtue of the Fourth Amendment, *Monroe v. Pape,* 365 U.S. 167, and it has been firmly established that a peaceful assemblage of union members for the purpose of non-violent protest is a right of assembly and speech guaranteed and protected by the First Amendment *Hague v. CIO,* 307 U.S. 496, *Thornhill v. Alabama,* 310 U.S. 88, *Thomas v. Collins,* 323 U.S. 516.

Any waiver of these fundamental constitutional rights must be knowing and unequivocal, *Emspak v. U.S.,* 349 U.S. 190, 195, and courts have been instructed to indulge every reasonable presumption against such a waiver, *Johnson v. Zerbst,* 304 U.S. 458, 464-465, whether in a criminal or civil context, *D.H. Overmeyer Co. v. Frick Co.,* 405 U.S. 174.

Allowing a party to an industrial dispute resort to imprisonment of an opponent via instigating an illegal arrest is but one

step removed from allowing resort to violence via gunfire. Whether a disgruntled foreman shoots a worker or a disgruntled dispatcher in St. Louis causes an illegal arrest of a truck driver makes little difference.

No labor organization could prospectively waive via collective bargaining agreement the constitutional right of its membership to peacefully protest in non-violent fashion such abhorent conduct. This Court has recognized a collective bargaining agreement cannot prospectively waive certain statutory rights, *Barrentine v. Arkansas-Best Freight System,* 450 U.S. 728; *Emporium Capwell Co. v. Community Organization,* 420 U.S. 50; *Mastro Plastics Corp. v. NLRB,* 350 U.S. 270. It cannot be gainsaid that the Constitution is on a lesser footing; deference to the Constitution should be greater than deference to congressional enactments.

Because of the Court of Appeals' constitutionally oblivious affirmation of a $26,238.50 judgment imposed upon Local 480 as a result of its members' exercise of constitutionally guaranteed rights, a writ should issue to bring up and correct the en banc decision.

II. The Decision Of The Court Of Appeals Conflicts With Decisions Of This Court And Our National Labor Policy As Expressed By The National Labor Relations Board.

The ex parte injunction in this case employed a procedure condemned in *Carroll v. Commissioners of Princess Anne,* 393 U.S. 175, and both the injunction and the subsequent judgment, affirmed by the Court of Appeals, were based upon nothing less than a fundamental refusal to recognize *Boy's Markets Inc. v. Retail Clerks,* 398 U.S. 235, and *Buffalo Forge Co. v. Steelworkers,* 428 U.S. 397, or pay heed to national labor policy as expressed by the National Labor Relations Board (NLRB).

For almost a decade, the NLRB has viewed a no-strike pledge in a collective bargaining contract to be coterminous with the

contractual grievance procedure absent an explicit expression of contrary intent, *Gary Hobart Water Corp. v. NLRB,* 210 NLRB 472, enf'd. 511 F.2d 284 (7th Cir.) cert. den. 423 U.S. 925. To the same effect is *Suburban Transit Corp.,* 218 NLRB No. 185, enf. den. on other grounds, 536 F2d 1018 (3rd Cir. 1976); see also, *Pacemaker Yacht Co.,* 253 NLRB 95. enf. den. on other grounds, 663 F.2d 455 (3rd Cir. 1981).

The instant contract nowhere contains an express, clear statement that Local 480 or its members waived the right to peacefully protest by strike action Ryder's conduct in procuring an illegal incarceration of union members. The district court failed to determine whether the strike protested an arbitrable dispute, and the en banc circuit court deemed such an inquiry irrelevant, but in point of fact Ryder concedes that the dispute arising from arrest of the union members could not have been resolved via the contract.[2]

This Court's recent opinion in *Jacksonville Bulk Terminal, Inc. v. Longshoremen,* 457 U.S. 702, is instructive by reiterating that before a strike can be enjoined with jurisdiction under 29 U.S.C. §185(a), a collective bargaining agreement must contain a grievance/arbitration procedure and the strike must be in protest of an arbitrable dispute; to the same effect is *Buffalo Forge, Id.*

An inquiry concerning the reason for the work stoppage is also crucial in the context of other decisions of this Court, because, as once observed by Justice Brennen, "a no strike obligation, express or implied, is the quid pro quo for an undertaking by the employer to submit grievance disputes through the

---

[2] Ryder's vice-president so testified: "Q: . . . do you know of any grievance procedure that would be contained in the contract that would have helped in any way to get Lee Thomas and Jerry Thomas Boyd out of jail in St. Louis? A: I don't know of anything that would have helped get them out of jail at that point, no."

process of arbitration", *Boy's Market, Id.* 398 U.S. at 248. It follows that the quid pro quo will not and cannot extend to matters which are not subject to resolution via the grievance procedure absent an express and explicit statement to the contrary; see also, *Gateway Coal Co. v. Mineworkers,* 414 U.S. 368, 382: "Absent an explicit expression of such an intention, however, the agreement to arbitrate and the duty not to strike should be considered as having coterminous application".

In the instant case, the contractual dispute settlement mechanism, along with the no-strike pledge, continually and interchangeably refers to labor disputes, economic activities and recourse, contract grievances and questions of contract interpretation. The union promises not to strike "without first using all possible means of settlement as provided for in this Agreement", 705 F.2d at 854, Appendix pp. A-5,23. It logically follows when a dispute is not possible of settlement by arbitration, strike action is permissible. The phraseology certainly is not an explicit expression of an intention no strikes will occur when the contractual procedures cannot even suggest a means of settlement for the underlying dispute.

The contract governs only the normal industrial and economic relationship of the parties. But such regulation does not encompass a situation in which one of the parties engages in conduct far beyond contemplation of the contract. Assume, for example, Ryder had hired a St. Louis assassin to murder the union members instead of taking away their precious liberty. Can it be imagined that a strike in protest of such conduct would be in breach of the agreement and that a judgment for damages could be imposed upon the labor union under such circumstances?

It takes little imagination to visualize the pernicious effect the Court of Appeals opinion will have upon industrial relations, the arbitral process, and the desirability of agreement upon any no-strike clause in a collective bargaining agreement. It would

be difficult to find a situation in which an employer more blatantly violated fundamental rights of its employees than one in which the employees have been wrongfully jailed. For the Court of Appeals to decide the union waived the right to protest such conduct is fundamentally inconsistent with the collective bargaining agreement, national labor policy and decisions of this Court. A writ of certiorari to review the Court of Appeals opinion should issue.

III. The Law Is Unclear As To Whether A Union May Be Held Liable In Damages For Breach Of Contract When Its Members Cease Work To Peacefully Protest A Dispute Which Cannot Be Remedied Under The Contractual Grievance Procedure.

Stripped of inessentials, the Court of Appeals has ruled that when an employer seeks a judgment for damages from a labor union, "no-strike clauses need not be construed narrowly to prohibit strikes only over arbitrable disputes", 727 F.2d at 601, Appendix p. A-35.

Such a narrow construction certainly does not apply when an employer invokes jurisdiction under §301 of the NLRA, 29 U.S.C. §185(a), and seeks injunctive relief against strike action pending arbitration, *Jacksonville Bulk Terminals v. Longshoremen,* 457 U.S. 702, [involving a contractual promise not to strike "for any cause whatever"]. A collective bargaining agreement should not have varying import and meaning dependent upon the type of judicial relief sought. It is illogical that, at least in the Sixth Judicial Circuit, meaning will be given to clauses in a collective bargaining contract dependent upon whether an employer seeks specific performance by injunction or money damages for breach.

Illogic aside, the decision by the Court of Appeals vividly contrasts with decisions from other appellate courts which give due deference to the factual reason a strike occurred and thereafter determine whether an express no-strike clause extends

further than the assumed quid pro quo with an arbitration clause, e.g., *United Steelworkers, etc. v. Fort Pitt Steel, etc.*, 635 F.2d 1071, 1077 (3rd Cir. 1980), cert. den. 451 U.S. 985 (1981), *Hampton Roads Shipping v. Intern. Longshoremens,* 631 F.2d 282, 285-286 (4th Cir. 1980), cert. den. 449 U.S. 1120, (1982); *Hyster Co. v. Independent Towing & Lifting Mach. Assn.*, 519 F.2d 89 (7th Cir. 1975), cert. den. 428 U.S. 910 (1976); see also *Delaware Coca-Cola Bottling Co. v. General Teamsters Local 326,* 624 F.2d 1182 (3rd Cir., 1980).

As a result of the opinion by the Court of Appeals, and in view of countervailing decisions from other appellate courts, the law is unclear as to whether a union may be held liable in damages for breach of contract when its members cease work to peacefully protest a dispute which cannot be remedied under the contractual grievance procedure. A writ should issue for the purpose of clarifying this important aspect of labor law.

IV. **The Decision Of The Court Of Appeals Is Void Because Senior Circuit Judge Peck, Who Authored The En Banc Opinion, Was Ineligible To Participate In The En Banc Deliberations.**

The Judicial Code, as amended in 1982, established the potential eligibility of senior circuit judges to participate with an en banc court which reviews a panel decision when the senior circuit judge was a panel member, 28 U.S.C. §46(c). However, actual participation as a member of the en banc court is permissive rather than mandatory and the criteria established for eligibility of the senior circuit judge are these: "at his election and upon designation and assignment pursuant to . . . this title and rules of the circuit", *Ibid.*

Rule 14 of the Sixth Circuit absolutely precludes a circuit judge on senior status from participating when the court sits en banc: "A court en banc shall consist only of all Circuit Judges in regular active service"; see also Third Circuit Rule 2(3); Eighth Circuit Rule 16(a).

The influence of Senior Circuit Judge Peck as author of the en banc opinion cannot be discounted, and a writ of certiorari is the appropriate manner in which to challenge the improper participation which makes the en banc decision void, *American Construction Co. v. Jacksonville, T. & K.W.R. Co.*, 148 U.S. 486. Parties to litigation, members of the Bar and the general public are entitled to a better result than to be cast adrift among appellate courts which would proceed without regard to their published rules. The general policy has been that only active circuit judges should determine the major doctrinal trends for their court, *United States v. American-Foreign S.S. Corp.*, 363 U.S. 685, 690. When a circuit court adopts the general policy and thereafter allows an ineligible judge to participate in en banc deliberations, a writ of certiorari should issue to that court to bring up and quash the void opinion. Otherwise, rules published under requirement of 28 U.S.C. 2077(a) may be abrogated and ignored with impunity.

CONCLUSION

The instant work stoppage was not motivated by any hope for economic gain or more preferable wages, hours and working conditions. It occurred only after Ryder resorted to self help in excess of contract or reason by having two union members arrested. A peaceful, non-violent protest of the arrests resulted in judicial assessment of damages against the union. Many of the incongruities resultant from the decision below have been pointed out. The decision is incorrect, void, and it follows that a writ of certiorari should be granted.

Respectfully submitted,

CECIL D. BRANSTETTER

R. JAN JENNINGS
Branstetter, Kilgore & Stranch
200 Church Street, 4th Floor
Nashville, Tennessee 37201

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I certify that two copies of the foregoing Petition for Writ of Certiorari have been mailed to Mr. Robert H. Cowan, GRACEY, MADDIN, COWAN & BIRD, 300 James Robertson Parkway, Nashville, TN 37201, this 9th day of May, 1984.

APPENDIX

No. 81-5127

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Ryder Truck Lines, Inc.,
Plaintiff-Appellee,

v.

Teamsters Freight Local Union No. 480;
Luther Watson; Frank Hopkins; Turner Brim;
Clyde Powers; and Its Agents, Servants, Members
and Employees and All Persons Acting in Concert
With It and Employees of Ryder Truck Lines, Inc.,
Who Act In Concert With Said Named Defendants,
Defendants-Appellants.

On Appeal from the United States District Court
for the Middle District of Tennessee

Decided and Filed April 22, 1983

Before: KEITH and JONES, Circuit Judges, and PECK, Senior Circuit Judge.

KEITH, Circuit Judge, delivered the opinion of the court in which Jones, Circuit Judge joined. PECK, Senior Circuit Judge, filed a separate dissenting opinion.

KEITH, Circuit Judge. Appellant, Teamsters Freight Local Union No. 480, initiated a work stoppage allegedly in violation of a collective bargaining agreement with Ryder Truck Lines. Ryder filed the present action for damages pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. §185. The district court held that the work stoppage violated the no-

strike provision of the collective bargaining agreement. We vacate and remand this action for the reasons set forth below.

THE DISPUTE

Willie Thomas and Jerry Boyd are over-the-road truck drivers and members of Teamsters Freight Local Union 480 (Union). On May 16, 1977, they were in St. Louis, Missouri awaiting assignment by Ryder Truck Lines (Ryder). A Ryder dispatcher summoned them to the terminal, assigned them a route, and identified the trucks they were to drive. After Boyd and Thomas conducted a walk-around inspection of their vehicles, they informed the dispatcher that their windshields were dirty and requested that the windshields be cleaned.

A dispute developed over responsibility for cleaning the windshields. Usually a Ryder employee called the fuel man services the trucks, but he was not on duty. Supervisory personnel formerly performed maintenance tasks in the absence of the fuel man. However, sometime prior to the first of May the new terminal manager directed supervisors to cease washing windshields. No formal policy regarding this task had been established on the date of the incident. The dispatcher therefore consulted his supervisor and advised Thomas and Boyd that they would have to wash their own windshields.

Boyd and Thomas in turn contacted their Nashville business agent, Frank Hopkins, who consulted the Union president. After the telephone conversation, the drivers refused to wash the windshields or to proceed until they were cleaned. At this point, the dispatcher advised them that they would be considered to have "voluntarily quit" their jobs unless they complied with his directions. The drivers remained steadfast; the dispatcher consequently ordered Thomas and Boyd to vacate the premises, alleging that they had "voluntarily quit." However, Thomas and Boyd refused to leave until they were fired. The distinction, they felt, was significant. A discharged

employee is furnished transportation home (in this case, Nashville) at company expense. On the other hand, an individual who voluntarily resigns is responsible for his own transportation.

When it became clear that neither side would alter its position, an official of Ryder contacted the police and swore out criminal warrants for the arrests of Thomas and Boyd on trespassing charges. The drivers, after again telephoning their Nashville agent, were arrested and escorted to jail. They remained incarcerated for approximately six hours.

During that period, the Union president met with representatives of Ryder's Nashville facility in an attempt to resolve the conflict. At approximately 6 p.m. that evening, the Union set up a picket line at the Nashville Ryder terminal and initiated a work stoppage. Meanwhile, the Union secured the release of the drivers and arranged for their return to Nashville.

Thomas and Boyd arrived in Nashville on May 17. They went immediately to the union hall and then to the Ryder terminal. According to Thomas, the strike was in progress when they arrived at the terminal at approximately 1 p.m. Though the men had not returned to work when Boyd and Thomas left the premises, they said the line was "coming down."

At 1:30 p.m. Ryder received a temporary restraining order from the United States District Court for the Middle District of Tennessee enjoining the strike.[1] Although the Union returned to work at approximately 2 p.m., the Union maintains that the strike terminated independently of the TRO when the members saw that Thomas and Boyd had been released from jail. Conversely, Ryder argues that the strike continued until the temporary restraining order was issued. The district court made no finding on what prompted the end of the strike. However, the

---

[1] The Temporary Restraining Order was issued without a hearing or any opportunity for factfinding.

court noted that the strike ended "after" the temporary restraining order was issued.[2]

THE AGREEMENT

Pursuant to the Collective Bargaining Agreement,[3] the Union filed a grievance alleging that Ryder had wrongfully discharged Thomas and Boyd. Contemporaneously, Ryder filed a grievance based on the Union's alleged breach of the no-strike provision of the agreement. The relevant portion of the agreement is contained in Article 8 as follows:

> Section 2. Work Stoppages.
>
> (a) The parties agree that all grievances and questions of interpretation arising from the provisions of this Agreement shall be submitted to the grievance procedure for determination. Accordingly, except as specifically provided in other Articles of the National Master Freight Agreement, no work stoppage, slowdown, walkout or lockout shall be deemed to be permitted or authorized by this Agreement, except:
>
> (1) failure to comply with a duly adopted majority decision of a grievance committee established by the National Master Freight Agreement or Supplemental Agreement;

---

[2] There was disputed testimony regarding whether the Union called the strike or whether the Union simply authorized or "took over the strike after it had already begun." The court found that the Union, in fact instituted the strike through its agents Luther Watson (Union President), Frank Hopkins (Business Agent) and Turner Brim (Union Representative). Despite the Union's claim that it did not call the strike, the district court was persuaded by Luther Watson's statement that he "calls the shots" for the Union. Watson further testified that since he had been president, the members had never started or ended a strike except at his direction.

[3] The Collective Bargaining Agreements are known as the "National Master Freight Agreement" and the "Southern Conference Area Over-The-Road Supplemental Agreement."

> (2) a National Grievance Committee deadlock of a grievance rendered pursuant to the procedures provided herein; and
>
> (3) failure to make health and welfare and pension payments in the manner required by the applicable Supplemental Agreement...
>
> The Local Union shall give the Employer a twenty-four (24) hour prior written notice of the Local Union's authorization of strike action which notice shall specify the majority grievance committee decision or deadlocked National Grievance Committee decision providing the basis for such authorization.

Article 44 of the Supplemental Agreement further provides:

> The Unions and the employers agree that there shall be no strikes, lockouts, tieups, or legal proceedings without first using all possible means of settlement as provided for in this Agreement and in the National Agreement, if applicable, of any controversy which might arise.

The grievance committee, a permanent national forum consisting of an equal number of union and employer representatives,[4] decided the wrongful discharge issue in favor of the union. Thomas and Boyd were reinstated with back pay and the

---

[4] Article 8 Section 1(b) of the National Master Freight Agreement provides in part:

> (b) Any matter which has been referred pursuant to Section 1(a) above, or any question concerning the interpretation of the provisions contained in the Master Agreement, shall be submitted to a permanent National Grievance Committee which shall be composed of an equal number of Employer and Union representatives. The National Grievance Committee shall meet quarterly, for the disposition of grievances referred to it, or may meet at more frequent intervals, upon call of the Chairman of either the Employer or Union representatives on the National Grievance Committee. ...

union was reimbursed for the air fare from St. Louis to Nashville. However, the grievance committee failed to reach a decision at its September 8, 1977 meeting regarding Ryder's claim that the work stoppage was illegal. The committee met again on March 8, 1978 but was unable to reach a decision on the strike issue. Hence the matter was deemed to be deadlocked pursuant to Article 8, Section 2(a) of the National Master Freight Agreement. Ryder returned to district court and filed an amended complaint seeking damages.

On January 12, 1981 a bench trial was held. The court concluded on January 27, 1981, that the strike violated "the specific terms of the collective bargaining agreement." The court found: (1) that the strike "was not authorized by any of the exceptions to the no-strike clause in the collective bargaining agreement as set forth in Article 8, Section 2(a) of the National Master Freight Agreement"; and (2) "that the 24-hour notice requirement as a condition precedent to any strike was not complied with by Defendant [union] prior to the strike." The court entered judgment in favor of Ryder, and awarded compensatory damages in the amount of $26,238.50. The Union appeals.

ANALYSIS

The pivotal issue this Court must address is whether the union breached the no-strike clause of the Collective Bargaining Agreement when it initiated the work stoppage. Ryder argued and the district court concluded that the express language of the no-strike clause precluded judicial interpretation and unambiguously prohibited *all strikes*. The union contends that a contractual prohibition against work stoppage does not invalidate the right to conduct a work stoppage to protest matters which cannot be resolved under contractual grievance procedures. Allegedly, a work stoppage precipitated by a non-arbitrable dispute does not come within the purview of the contract, and cannot constitute a breach of the no-strike clause. We agree.

The right to strike or engage in work stoppages, guaranteed by Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, may be surrendered or waived by an express provision in the collective bargaining agreement. *Mastro Plastics Corp. v. NLRB,* 350 U.S. 270, 280 (1956). Certain statutory rights such as the right to strike "are conferred on employees collectively to foster the process of bargaining and properly may be exercised or relinquished by the union as a collective bargaining agent to obtain certain economic benefits for union members." *Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 51 (1974). The promise not to strike therefore is the *quid pro quo* for the employer's promise to submit grievances to arbitration. *Boys Markets v. Retail Clerks,* 398 U.S. 235, 248 (1970).

The concept of coterminous interpretation is founded upon the *quid pro quo* theory. That is, the right to strike may be bargained away in exhcange for an employer's promise to bestow certain benefits such as terminal arbitration. Coterminuous interpretation refers to the notion that if the subject matter of the strike is arbitrable, then the strike violates the no-strike clause. *Delaware Coca-Cola v. General Teamsters Local Union,* 624 F.2d 1182, 1185 (3d Cir. 1980). Correlatively, the obligation to refrain from striking is not violated when the subject of the strike is non-arbitrable. *Id.*

The Union refers this Court to several Supreme Court cases which apply the concept of coterminous interpretation. Ryder maintains that the Supreme Court cases are inapposite because they involve injunctive relief. The cases are not applicable, according to Ryder, because there are statutory limitations on the use of injunctive relief. Ryder maintains that the Norris LaGuardia Act,[3] 29 U.S.C. §§ 101-115, forbidding the issuance

---

[3] Section 4 of the Norris LaGuardia Act provides in part:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit

of injunctions in labor disputes, requires that a strike be over a dispute subject to arbitration before an injunction can issue.

It is also argued that those cases involving implied no-strike provisions are distinguishable from express no-strike clauses. Ryder concedes that when an implied no-strike obligation is present, inquiry must be made into whether the dispute is arbitrable since an implied no-strike provision extends only to strikes over arbitrable grievances. However, Ryder maintains that the analysis of cases involving injunctive relief or implied provisions is not controlling when there is an express clause. We disagree. We find these cases to be instructive. The principles enunciated by the Supreme Court rest on a perception of labor relations that has equal force where there is an express no-strike clause. *See Delaware Coca-Cola,* 624 F.2d at 1187.

In *Teamsters Local 174 v. Lucas Flour,* 369 U.S. 95 (1962) the employer fired an employee for unsatisfactory performance, and the union called a strike. The employer brought suit under section 301 of the Labor Management Relations Act, seeking damages for an alleged illegal strike. Though the agreement did not contain an express no-strike provision, the court found an implied duty not to strike inherent in the union's obligation to arbitrate. In holding that the strike violated the agreement, the

---

> any person or persons participating or interested in such dispute. . . from doing, whether singly or in concert, any of the following acts:
>
> (a) ceasing or refusing to perform any work or to remain in any relation of employment.

29 U.S.C. § 104.

The Supreme Court has given the anti-injunction provisions of the Act a broad interpretation "recognizing exceptions only in limited situations where necessary to accommodate the Act to specific federal legislation, or paramount congressional policy." *Jacksonville Bulk Terminals, Inc. v. International Longshoreman's Association,* ___ *U.S.* ___, *102 S.Ct. 2673, 2678 (1982). See, e.g., Boys Markets, Inc. v. Retail Clerks Union,* 398 U.S. 235 (1970).

Supreme Court gave deference to "the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare." *Id.* at 105.[6] Consistent with that policy, the Court established certain boundaries to the scope of such no-strike obligation:

> *What has been said is not to suggest that a no-strike agreement is to be implied beyond the area which it has been agreed will be exclusively covered by compulsory terminal arbitration.*

Id. at 106 (emphasis added).

Similarly, in *Gateway Coal Co. v. United Mine Workers of America,* 414 U.S. 368 (1974), the Court recognized the relationship between the no-strike and arbitration clauses. After emphasizing that a no-strike obligation is undertaken in exchange for the employer's promise to arbitrate, the Court stated:

> Thus, an arbitration agreement is usually linked with a concurrent no-strike obligation, but the two issues remain analytically distinct. Ultimately, each depends on the intent of the contracting parties. It would be unusual, but certainly permissible, for the parties to agree to a broad mandatory arbitration provision yet expressly negate any implied no-strike obligation. . . . Absent an explicit expression of such an intention, however, the agreement to arbitrate and the duty not to strike should be construed as having coterminous application.

Id. at 382.

---

[6] The strong federal policy promoting arbitration was enunciated by the Supreme Court in the *Steelworkers* Trilogy. The Court established the now well-known presumption of arbitrability. *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

The Supreme Court's holding in *Buffalo Forge v. United States Steelworkers,* 428 U.S. 397 (1976) is most compelling. *Buffalo Forge,* which contains an express no-strike provision in the collective bargaining agreement, is the culmination of the analysis developed in *Lucas Flour* and *Gateway Coal.* In holding that the Boys Market[7] injunction against strikes would not extend to strikes arising from non-arbitrable grievances, the Court reiterated that "the *quid pro quo* for the employer's promise to arbitrate was the union's obligation not to strike over issues that were subject to the arbitration machinery." *Id.* at 407. Moreover, the Court noted:

> the strike was not *over* any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither its causes nor the issue underlying it was subject to the settlement procedures provided by the contracts between the employer and the respondents. The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of its bargain. Thus, had the contract not contained a no-strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case. *Gateway Coal Co. v. Mine Workers,* 414 U.S. at 382.

---

[7] In *Boys Markets,* the Supreme Court re-examined *Sinclair Refining Co. v. Atkinson,* 370 U.S. 195 (1962) which held that the Norris-LaGuardia Act precludes a federal district court from enjoining a strike in breach of a collective bargaining agreement. Under *Sinclair,* the prohibition existed even where the agreement contained provisions for binding arbitration of the grievance concerning which the strike was called. In order to accommodate the anti-injunction provisions of Norris-LaGuardia to the subsequently enacted provisions of § 301(a)

Id. at 407-08. *See Jacksonville Bulk Terminals, Inc. v. International Longshoreman's Association,* ____U.S.____, 102 S.Ct. 2673 (1982) (Supreme Court refused to enjoin a sympathy strike in a case involving an express no-strike provision, because the underlying dispute was not arbitrable).

The vast weight of authority indicates that an express waiver of the right to strike cannot be read in a vacuum. A no-strike provision must be interpreted in light of the concomitant duty to arbitrate. The Third Circuit in *Delaware Coca-Cola* stated, "Relevant Supreme Court precedent as shown by both *Buffalo Forge* and *Mastro Plastics,* supports the conclusion that a broadly worded no strike clause does not waive the right to strike over nonarbitrable matters that are not covered by the strikers' contract." 624 F.2d at 1187.[8] The Ninth Circuit also held that a "no strike obligation is limited to disputes over arbitrable issues." *NLRB v. Southern California Edison Co.,* 646 F.2d 1352, 1367 (9th Cir. 1981). Similarly, the Seventh Circuit

---

of the Labor Management Relations Act and the strong federal policy favoring arbitration, the Court overruled *Sinclair.* The Court found it essential to recognize an exception to the anti-injunction provisions for cases in which the employer sought to enforce the Union's contractual obligation to arbitrate grievances rather than to strike over them. *Jacksonville Bulk Terminals v. International Longshoreman's Association,* 102 S.Ct. at 2679 (1982).

[8] While recognizing the concept of coterminous interpretation, the Third Circuit crystallized the significance of *Buffalo Forge* as follows:

> The relevance of *Buffalo Forge* is the recognition that, absent some evidence to the contrary, the *quid pro quo* theory underlying coterminous interpretation applies where there is an express no-strike clause in the contract. Normally, the employer will not agree to arbitration unless he gets an agreement from the union that it will not strike over those arbitrable issues. In addition, in the normal case the union will not agree to a no-strike clause that extends beyond the arbitration clause.

Delaware Coca-Cola, 624 F.2d at 1186.

declared, "once a determination is made that a dispute is subject to arbitration, the obligation not to strike is considered to be coterminous." *Irvin H. Whitehouse & Sons v. NLRB,* 659 F.2d 830, 835 (7th Cir. 1981).

Basic contract law mandates that contractual provisions be interpreted in the context of the total agreement. The meaning of a no-strike clause can be gleaned "by looking to the language of the clause, the structure of the contract, the bargaining history and other relevant conduct of the parties...." *Delaware Coca-Cola,* 624 F.2d at 1185.

The language of the contract between Ryder and the Union reflects a typical collective bargaining agreement dealing with terms of employment and the normal operations of the business. The no-strike provision at issue provides in pertinent part "there shall be no strikes, lockouts, tieups or legal proceedings *without first using all possible means of settlement provided* by the agreement" (emphasis added). This language reinforces the notion that the no-strike clause is only as wide as the settlement procedures.

More importantly, it would be inimical to fundamental principles of labor relations to prohibit strikes in protest of matters which cannot be resolved through arbitration. Therefore the reason for the strike is critical. If the dispute was subject to arbitration, the strike was illegal. On the other hand, if the subject of the strike was nonarbitrable there was no breach of the contract.

Applying these principles to this case, it is clear that the responsibility for cleaning windshields is a matter governed by the contract and subject to arbitration. Therefore, if the windshield dispute was the cause of the work stoppage, the strike was illegal. However, the arrest of employees is a matter which does not concern the contractual relationship of the parties, and cannot be resolved through grievance procedures. Hence, if the work stoppage was caused by the arrest of union men, the strike

was not illegal. The district court made no finding with respect to the reason for the strike.

Evidence adduced before the district court indicated that the cause of the work stoppage was the arrest and jailing of union members. James Barton, Ryder Area Transportation manager, testified that union representatives informed him "if we did not get them out of jail that they were going to strike on us." Barton also testified that union representatives stated "the police in St. Louis caused it [the strike]." This testimony was buttressed by the introduction of the following telegram the Union sent to Ryder: "Reason for stoppage was the company jailed two of its black employees, members of this organization, for no reason."

A factual determination of the reason for the strike was critical to a finding of liability. This Court recognizes the right of the district court to determine the facts as it deems appropriate. However, the omission of this factual determination constitutes clear error.

DAMAGES

The district court's ultimate resolution of the issue of liability may render moot the issue of damages. However, because mootness cannot be presumed at this juncture, judicial economy compels us to address that issue in its present context. We do so cautiously with the admonition that our attention to this issue should not be construed as a preemptive expression by this court. Two questions are presented: 1) whether the profit and loss statement by which damages were calculated was properly admitted under Fed.R.Evid. 1006; and 2) whether the evidence, assuming proper admission, supports the amount of the damages award.

On appeal the Union alleges several errors with respect to the admission of the profit and loss statement. We note from the outset that only those objections raised at trial are preserved for

appeal. *See* Fed.R.Evid. 103, Fed.R.Civ.Pro. 46; *Flame Coal Co. v. United Mine Workers of America,* 303 F.2d 39, 43 (6th Cir. 1962). A review of the relevant portion of the transcript reveals that the Union's only specific objection to the profit and loss statement was that it was introduced into evidence through a witness who did not prepare the summary statement. Though this objection is based upon Rule 1006, we find nothing in the language of the Rule which would require that a summary be introduced through its preparer. Moreover, the summary profit and loss statement was authenticated by its preparer who later took the stand. The admission of the statement did not constitute reversible error.

The union further contends that the profit and loss summary does not support the trial court's calculation of damages. Specifically, they object: 1) that overhead expenses for all the terminals in the Nashville region should not have been included in the calculation of damages; and 2) that Ryder's revenues should have been offset by any losses sustained as a result of the work stoppage.

On review this Court will not disturb a trial court's factual finding of the amount of damages unless the finding is clearly erroneous under Rule 52(a) Fed.R.Civ.P. The Union disputes Ryder's contention that it suffered the loss of overhead expenses for all fifteen regional terminals. We find no error in the district court's inclusion of overhead expenses for all the terminals in the Nashville region. The evidence demonstrated that the Nashville terminal served as the hub of the regional area. When work stopped there, none of the satellite terminals could operate. It was therefore not improper for the trial court to include overhead costs for all the regional satellite terminals in its damages award.

The Union's second objection is that the amount of revenues should have been offset against Ryder's claimed overhead expenses. The statement established Ryder's daily revenue at

$96,359. The Union argues that overhead expenses should have been subtracted from the daily gross and any resultant loss assessed as damages. The end result would have been the diminution of Ryder's damages. However, as the district court correctly noted, there was no offset required because there were no profits. There was unrebutted testimony that the Nashville terminal sustained a loss for the last two years. The damages calculations were not clearly erroneous.

Accordingly, the failure to make a precise inquiry into the reason for the strike constituted error under the facts of this case. On remand, the District Court should make a specific finding as to whether the strike was caused by the windshield dispute or the arrest of Union men. The judgment of the district court is therefore vacated and the case remanded for further proceedings consistent with this opinion.

PECK, Senior Circuit Judge dissenting. Although I am in general agreement with the majority's resolution of the damages issues raised by the Union, I respectfully dissent because I am convinced that the explicit no-strike clauses included in the bargaining agreement waived the Union's right to strike in this case. The majority's extension of the applicability of the "doctrine of coterminous interpretation" to collective bargaining agreements containing express no-strike clauses independent of arbitration clauses from collective bargaining agreements containing arbitration clauses but no no-strike clause breaks ground better left to the legislative plow. I further regret the majority's willingness to construe the district court's findings of fact in a vacuum, the result of which is a failure to recognize that this case is one in which the Union allowed a clearly arbitrable issue to explode into a nonarbitrable one.

The majority's recounting of the facts concerning the dispute at Ryder's St. Louis terminal and the strike at Ryder's Nashville terminal is generally adequate. Several facts, however, need to be underscored because they are critical to a full understanding of this case. First, the strike continued after the drivers had been released from jail and had returned to Nashville.[1] Second, the underlying dispute over who was to clean the windshields was a controversy that could have been resolved by arbitration. Third, article 8, section 2 of the National Master Freight Agreement specifies that the local union will give the employer a twenty-four hour prior written notice of the local union's authorization of a strike action. Fourth, the Union gave no notice to Ryder prior to taking the strike action. Fifth, the strike was not authorized by any of the express exceptions to the no-strike clause contained in article 8, section 2 of the National Master Freight Agreement. Last, the issue is not whether the district court's grant of injunctive relief was proper but whether an award of damages may be granted on account of the strike.

The majority accepts the Union's argument that if the strike was in protest of the arrests, it did not violate the collective bargaining agreements because the arrests were not arbitrable under the agreements. The majority then requires this case to be remanded to the district court for a determination of the reason for the strike. In my view there is no reason to remand.

The basic question in this case is the scope of the waiver of the right to strike in the no-strike clauses of the collective bargaining agreement. The majority apparently fails to recognize that this question is totally divorced from the question whether a federal court could have enjoined the continuation of the strike without running afoul of the anti-injunction provision of § 4(a)

---

[1] This fact eviscerates the Union's empassioned portrait of the strike as the only means of rescuing the drivers from "unconstitutional" custody.

of the Norris-LaGuardia Act.[2] The majority's citation of cases involving the legality of courts' prohibition or restraint of work-stoppages is inappropriate. In such cases the issue is whether exercise of a court's equitable powers may be brought within the narrow exception to § 4(a) that the Supreme Court established in *Boys Markets, Inc. v. Retail Clerk's Union*, 398 U.S. 235 (1970). Applicability of the *Boys Markets* exception does hinge on whether a dispute is arbitrable because "aside from the enforcement of the arbitration provisions of such contracts, within the limits permitted by *Boys Markets*, the Court has never indicated that the courts may enjoin actual or threatened contract violations despite the Norris-LaGuardia Act." *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397, 409 (1976).

The majority's reliance on *Buffalo Forge* is misplaced. The *Buffalo Forge* court, in holding that the *Boys Markets* exception does not sanction the enjoining of strikes over nonarbitrable disputes, did not thereby hold that actions for damages could not arise if those strikes were in violation of an express no-strike clause. *See* Note, *Coterminous Interpretation: Limiting the Express No-Strike Clause*, 67 Va. L. Rev. 729, 744 (1981) ("The limitation the Court in *Buffalo Forge* placed on injunctive relief for sympathy strikes resulted from the interaction between the policy favoring arbitration and the jurisdictional limitation on federal injunctions against peaceful strikes not

---

[2] Which provides:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment.

29 U.S.C. § 104.

from the coterminous interpretation of arbitration and no-strike clauses."). As *Boys Markets* itself recognized, "other avenues of redress, such as an action for damages, would remain open to an aggrieved employer" even if injunctive relief was prohibited by the Norris-LaGuardia Act. 398 U.S. at 248. *Cf. Hampton Roads Shipping Ass'n v. International Longshoremen's Ass'n,* 631 F.2d 282 (4th Cir. 1980) (non-enjoinable work-stoppage may still be prohibited by general no-strike clause).

In support of its position that a remand is required in this case the majority offers as a settled legal rule that "[a] no-strike provision must be interpreted in light of the concomitant duty to arbitrate." Maj. op. at 11. The majority reads the legal precedents too broadly. As the Third Circuit has noted in construing the decision by a divided panel in *Delaware Coca-Cola Bottling Co. v. General Teamster Local 326,* 624 F.2d 1182 (3d Cir. 1980), "[t]he principle of coterminous interpretation, however, is not a rule of law, but merely a tool of contract interpretation . . . which 'must be applied to the facts of each case.' " *Pacemaker Yacht Co. v. NLRB,* 663 F.2d 455, 457-58 (3d Cir. 1981) (citations omitted). The Ninth Circuit's decision in *NLRB v. Southern California Edison Co.,* 646 F.2d 1352 (9th Cir. 1981), provides little support for the majority's position because in that case the court, over Judge Markey's dissent, simply deferred to the NLRB's factual determination that the contractual no-strike provisions at issue did not prohibit a sympathy strike. Again, the majority's reliance on *Irvin H. Whitehouse & Sons v. NLRB,* 659 F.2d 830 (7th Cir. 1981), is misplaced because that case involved an implied no-strike obligation, not an express no-strike clause. Finally, it is clear that courts have recognized that although "an arbitration agreement is usually linked with a concurrent no-strike obligation . . . the two issues remain analytically distinct," *Gateway Coal Co. v. United Mine Workers,* 414 U.S. 368, 382 (1974), and have held that the applicability of no-strike clauses are not limited by the scope of the arbitration clause. *E.g., Iowa Beef Processors, Inc. v. Amalgamated Meat Cutters,* 597 F.2d 1138 (8th Cir.),

cert. denied, 444 U.S. 840 (1979); *W-I Canteen Service Inc. v. NLRB,* 606 F.2d 738 (7th Cir. 1979); *Amcar Division, ACF Industries Inc. v. NLRB,* 641 F.2d 561 (8th Cir. 1981).

To understand the proper application of the principle of coterminous interpretation, it must be recognized that different types of labor contracts impose different no-strike obligations. In one type, the no-strike obligation is not express, but rather is implied from the mandatory arbitration provisions of the contract. Not surprisingly, such contracts are held not to forbid strikes over matters not subject to compulsory arbitration. *See Gateway Coal Co. v. United Mine Workers,* 414 U.S. 368, 382 (1974) ("Absent an explicit expression of [a contrary] intention . . .the agreement to arbitrate and the duty not to strike should be construed as having coterminous application.").

In other cases, such as here, the right to strike is explicitly waived in the collective bargaining agreement. Even where a dispute is not between the parties to a collective bargaining agreement, and therefore could not be settled by arbitration under the contract, the right to strike may be waived. *Amcar Division, ACF Indus. v. NLRB,* 641 F.2d 561, 566 (8th Cir. 1981). Thus, the right to engage in a sympathy strike, or to refuse to cross a picket line, may be waived by contract. *NLRB v. Rockaway News Supply Co.,* 345 U.S. 71, 80 (1953).

The question remains whether the work-stoppage in this case was prohibited by the general no-strike clauses found in the collective bargaining agreements. The majority argues that the arrests of the drivers may have taken the Union's dispute with Ryder out of the coverage of those clauses. This argument ignores the arbitrability of the underlying dispute over the responsibility for cleaning windshields,[3] the Union's failure to provide a twenty-four hour prior written notice of the strike authoriza-

---

[3] Similar disputes had in fact been arbitrated under the procedures set in the collective bargaining agreements.

tion and the absence of any authorization for the strike in the exceptions to the no-strike clause.

I would adopt the conclusions of District Judge Wiseman in this case:

> [T]he parties in this case have classically made a mountain out of a mole hill. The two drivers could have washed their own windshields. One of them testified that the trucks contain automatic washers, which he customarily used. *If they thought this work was not their responsibility and a dispute existed in relation to it, they could have filed a grievance over it upon their return to Nashville.* The company used monumental bad judgment in causing the arrest of the two drivers. *The union officials in Nashville, in frequent telephone conversation with the drivers, had the opportunity to give better advice to them than was given.* The Company had the opportunity to defuse the situation when the matter was discussed between the union officials and Mr. Barton. In general, most of the actors in this drama performed with less than common sense.
>
> The mutual errors leading up to the work stoppage cannot excuse the fact that there was an illegal strike in breach of the contract. When a union sanctions, approves, or incites an illegal strike, as the Court finds defendant has done in this case, it is liable in damages to the employer. *Penn. Packing Co. v. Amalgamated Meat Cutters, Local 195,* 497 F.2d 888 (3rd Cir. 1974).

(Emphasis added).

Judge Wiseman's conclusions are well-supported by the language of the contract in that Article 44 of the Supplemental Agreement provides in relevant part:

> The Unions and the employers agree that there shall be no strikes, lockouts, tieups' or legal proceedings *without first using all possible means of settlement* as provided for in

> this Agreement and in the National Agreement, if applicable, *of any controversy* which might arise.

(Emphasis added). The failure to defuse the arbitrable underlying dispute by the Union was in clear violation of its contractual obligations. Indeed, the majority's failure to find the Union's conduct to be in violation of the no-strike clause acts as an invitation to unions to allow arbitrable disputes to erupt into nonarbitrable ones. Recognition that the work-stoppage was in violation of the no-strike clauses, however, would give deference to "the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare." *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 105 (1962).

Although both Ryder and the Union may have acted obtusely in this affair, and both may have been playing games of brinksmanship in labor relations, it is the Union that violated the collective bargaining agreement by needlessly allowing a small bud of disagreement to ripen into a dispute. The Union must therefore be held liable for the strike, even though Ryder is not blameless in its handling of the problem at the St. Louis terminal. Therefore, although I am in agreement with the majority's handling of the issues raised concerning the district court's assessment of damages, I dissent from the majority's remanding this case to the district court.

No. 81-5127

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Ryder Truck Lines, Inc.,
Plaintiff-Appellee,

v.

Teamsters Freight Local Union No. 480;
Luther Watson; Frank Hopkins; Turner Brim;
Clyde Powers; and Its Agents, Servants, Members
and Employees and All Persons Acting in Concert
With It and Employees of Ryder Truck Lines, Inc.,
Who Act In Concert With Said Named Defendants,
Defendants-Appellants.

On Appeal from the United States District Court
for the Middle District of Tennessee

Decided and Filed February 13, 1984

Before: LIVELY, Chief Circuit Judge; EDWARDS, ENGEL, KEITH, MERRITT, KENNEDY, MARTIN, JONES, CONTIE, KRUPANSKY, and WELLFORD, Circuit Judges; and PECK, Senior Circuit Judge.

PECK, J., delivered the opinion of the Court, in which LIVELY, C. J., ENGEL, MERRITT, KENNEDY, MARTIN, CONTIE, KRUPANSKY and WELLFORD, JJ., joined. KEITH, J., filed a dissenting opinion, in which EDWARDS and JONES, JJ., joined.

PECK, Senior Circuit Judge, delivering the opinion of the Court. A panel of this court vacated a district court's judgment that awarded damages to an employer, Ryder Truck Lines (Ryder), under § 301 if the Labor Management Relations Act,

29 U.S.C. § 185, for injuries arising from an alleged violation by Teamsters Freight Local Union No. 480 (Local 480) of the no-strike provisions of a collective bargaining agreement. 705 F.2d 851 (6th Cir. 1983). Although the panel upheld the district court's resolution of various damages issues, it held that the district court's failure to make a factual determination of the reason for the strike was reversible error because the agreement properly construed, prohibited strikes only over arbitrable disputes. Ryder filed a petition for rehearing, Fed. R. App. P. 40, and a suggestion for rehearing en banc, Fed. R. App. P. 35. This court granted the petition for rehearing and directed that the case be reheard en banc. 710 F.2d 233 (6th Cir. 1983). The effect of this action was "to vacate the previous opinion and judgment of this Court...and to restore the case on the docket as a pending appeal." 6th Cir. R. 14. The parties have submitted supplemental briefs and this court has heard additional oral argument. We now affirm the judgment of the district court.

I. Background

A. The Collective Bargaining Agreement

Ryder and Local 480 were signatories to a national collective bargaining agreement, the National Master Freight Agreement, and a supplemental agreement, the Southern Conference Area Over-the-Road Supplemental Agreement.[1] Each agreement contains a broadly worded no-strike provision. Article 44 of the supplemental agreement provides in relevant part:

> The Unions and the employers agree that there shall be no strikes, lockouts, tieups, or legal proceedings without first using all possible means of settlement as provided for in this Agreement and in the National Agreement, if applicable, of any controversy which might arise.

---

[1] The national and supplemental agreements collectively are referred to as the "collective bargaining agreement."

Article 8, § 2(a) of the national agreement provides in relevant part:

> The parties agree that all grievances and questions of interpretation arising from the provisions of this Agreement shall be submitted to the grievance procedure for determination. Accordingly, except as specifically provided in other Articles of the National Master Freight Agreement, no work stoppage, slowdown, walkout or lockout shall be deemed to be permitted or authorized by this Agreement except:
>
> (1) failure to comply with a duly adopted majority decision of a grievance committee established by the National Master Freight Agreement or Supplmental [sic] Agreement;
>
> (2) a National Grievance Committee deadlock of a grievance rendered pursuant to the procedures provided herein; and
>
> (3) failure to make health and welfare and pension payments in the manner required by the applicable Supplemental Agreement.
>
> * * *
>
> The Local Union shall give the Employer a twenty-four (24) hour prior written notice of the Local Union's authorization of strike action which notice shall specify the majority grievance committee decision or deadlocked National Grievance Committee decision providing the basis for such authorization. The Local Union shall comply with the provisions of the applicable Supplemental Agreement relating to strike action resulting from delinquencies in the payment of health and welfare or pension contributions.

In addition to the three exceptions to the no-strike provisions listed in article 8, § 2(a), articles 9,[2] 27,[3] and 28[4] of the national

---

[2] Article 9 provides in relevant part:

Article 9 Protection of Rights

Section 1. Picket Lines
It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line, including the primary picket line of Unions party to this Agreement, and including primary picket lines at the Employer's place of business.

Section 2. Struck Goods
It shall not be a violation of this Agreement and it shall not be cause for discharge of disciplinary action if any employee refuses to perform any service which his Employer undertakes to perform as an ally of an Employer or person whose employees are on strike, and which service, but for such strikes, would be performed by the employees of the Employer or person on strike.

[3] Article 27 provides:

Article 27 Emergency Reopening

In the event of war, declaration of emergency or imposition of economic controls during the life of this Agreement, either party may re-open the same upon sixty (60) days written notice and request renegotiation of matters dealing with wages and hours. There shall be no limitation of time for such written notice. Upon the failure of the parties to agree in such negotiations within sixty (60) days thereafter either party shall be permitted all lawful economic recourse to support its request for revisions. If Governmental approval of revisions should become necessary, all parties will cooperate to the utmost to attain such approval. The parties agree that the notice provided herein shall be accepted by all parties as compliance with the notice requirement of applicable law, so as to permit economic action at the expiration thereof.

[4] Article 28 provides:

Article 28 Sympathetic Action

In the event of a labor dispute between any Employer, party to

agreement outline explicit exceptions to the no-strike provisions in situations involving matters not covered by the grievance procedures adopted by the parties.

Finally, article 8 of the national agreement and articles 43 and 44 of the supplemental agreement outline grievance procedures. The broad character of the grievance procedure is reflected by the fact that approximately thirty six hundred grievances are docketed against Ryder under the grievance procedures per year.

B. The Dispute

This dispute, termed a "molehill" by the district court concerned who was responsible for the cleaning of windshields. Pursuant to a local agreement applicable to Ryder's St. Louis, Missouri terminal, Ryder employed one person, called a "fuel man", to service trucks and to wash windshields. There was no formal policy or procedure regarding the washing of windshields when the fuel man was not on duty. Prior to May 1, 1977, Ryder supervisory personnel on occasion had left the terminal office to wash windshields when the fuel man was not on duty. Either on May 1, 1977 or shortly thereafter, Ryder's new St. Louis terminal manager instituted a policy that supervisory personnel refrain from washing windshields and that drivers be required to wash their own windshields when the fuel man was not on duty. There was no evidence that this policy had been breached prior to May 16, 1977.

---

this Agreement, and any International Brotherhood of Teamsters' Union, parties to this or any other International Brotherhood of Teamsters' Agreement, during the course of which dispute such Union engages in lawful economic activities which are not in violation of this or such other Agreement, then any other affiliate of the International Brotherhood of Teamsters, having an Agreement with such Employer shall have the right to engage in lawful economic activity against such Employer in support of the above first-mentioned Union notwithstanding anything to the contrary in this Agreement or the International Brotherhood of Teamsters' Agreement between such employer and such other affiliate.

On May 16, 1977, two Nashville, Tennessee based Ryder drivers, Willie Thomas and Jerry Boyd, were awaiting assignment at St. Louis. Both drivers were members of Local 480. Ryder's St. Louis dispatcher called the drivers and advised them to come to the St. Louis terminal within the normal two-hour period to accept their assignments. After the drivers arrived at the terminal, they clocked in and conducted a "walk-around inspection" of their units. The drivers informed the dispatcher that the windshields were dirty and requested that they be cleaned.[5]

The dispatcher, after consulting a superior, advised the drivers that the fuel man was not on duty, that the company would not wash the windshields, and that, consequently, the drivers would have to wash their own windshields. The drivers telephoned their Nashville business agent, Frank Hopkins, who consulted Local 480 president, Luther Watson. After the conversation, the drivers refused to wash their windshields or to proceed until they were cleaned. The dispatcher, after again consulting his superior, informed the drivers that unless they proceeded as directed, they would be considered to have quit their jobs voluntarily. When the drivers adhered to their position, the dispatcher informed them that they had voluntarily quit and that they should leave the premises. The drivers refused to leave.

At this point, Ryder called police to remove the drivers from the premises. The police unsuccessfully requested the drivers to leave. The police also informed the dispatcher that they could remove the drivers only if a warrant for trespassing was issued. The dispatcher agreed to sign a warrant for trespassing. After the drivers again telephoned Hopkins, they announced that Ryder could fire them but that they would not leave the

---

[5] There was no evidence as to whether the windshields were so dirty that a safety hazard existed.

premises voluntarily because they had not quit their jobs. The drivers were arrested and escorted to jail. They were incarcerated for approximately six hours.

At 6:00 p.m. that day, Local 480 established a picket line at Ryder's Nashville terminal and instituted a work stoppage. Local 480 obtained the release of the drivers from jail and they returned to Nashville on the morning of May 17, 1977. Upon their return, the drivers went first to the union hall and then to Ryder's terminal. According to Thomas, when the drivers arrived at the terminal at approximately 1:00 p.m. the strike was still in progress. Following an ex parte hearing, the United States District Court for the Middle District of Tennessee issued a temporary restraining order enjoining the strike. The clerk entered this order at approximately 1:30 p.m. The strike ended at approximately 2:00 p.m., less than twenty-four hours after it began.

Pursuant to the collective bargaining agreement, the drivers filed grievances alleging that they had been wrongly discharged by Ryder. The decision of the grievance committee held for the drivers and provided for their reinstatement with back pay and for the compensation of their travel expenses from St. Louis to Nashville.

Ryder filed a grievance asserting that the strike was illegal. The National Grievance Committee deadlocked on this issue. Following the deadlock, Ryder initiated this action by filing an amended complaint seeking damages under § 301 of the Labor Management Relations Act. On January 12, 1981, a bench trial was held. The trial court held that Local 480 had violated the terms of the collective bargaining agreement because: (1) the strike it had instituted was not authorized by any of the exceptions to the no-strike provisions and (2) it had not furnished Ryder the twenty-four hour prior written notice of the strike required by article 8, § 2(a) of the national agreement. The trial court entered judgment in favor of Ryder and awarded compensatory damages of $26,238.50. Local 480 appeals.

II. Analysis

On appeal, Local 480's principal argument is that the strike did not violate the collective bargaining agreement because the arrests of the drivers were not arbitrable under the agreement and, therefore, any strike in protest of those arrests was not subject to the contractual no-strike provisions. Because the trial court did not make an explicit determination of the reason for the strike, Local 480 contends that a remand is necessary. There is, however, no need to remand for a specific finding of the cause of the strike, for we reject the legal premise offered by Local 480 that would make such an inquiry relevant in this case.

Local 480 offers as a settled legal rule applicable to this case the proposition that a no-strike clause waives the option of striking in response to a dispute only if the dispute is subject to the contractually provided grievance and arbitration procedures. We do not read the legal precedents as broadly.

The doctrine of coterminous interpretation of arbitration and no-strike clauses arose in the context of contracts containing an arbitration clause but lacking an explicit no-strike obligation. In *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962), the Supreme Court, affirming an award of damages arising from an illegal strike, held that even in the absence of an explicit no-strike clause, an arbitration clause creates an implied prohibition of strikes over matters subject to that clause. The Court stated that such an implied no-strike obligation was necessary "to promote the arbitral process as a substitute for economic warfare." *Id.* at 105.

The doctrine of coterminous interpretation has also been applied in the context of the narrow exception to the anti-injunction provision of § 4(a) of the Norris-LaGuardia Act., 29 U.S.C. § 104,[6] that was enunciated in *Boys Markets, Inc. v.*

---

[6] 29 U.S.C. § 104(a) provides:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in

Retail Clerk's Union, 398 U.S. 235 (1970). In *Boys Markets*, the Court held that a district court's injunction of a strike would not violate the Norris-LaGuardia Act if the court had held that the strike concerns a grievance which the parties are contractually bound to arbitrate and the court had ordered the employer to submit to arbitration. The rationale underlying *Boys Markets* was the implementation of the congressional preference for resolution of disputes by means of the contractually provided dispute settlement mechanisms.

In *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974), the Court applied the doctrine of coterminous interpretation as expressed in *Lucas Flour* and held that an arbitration clause gave rise to an implied no-strike obligation which permitted the issuance of an injunction against a strike based on the principles enunciated in *Boys Markets*. As in *Lucas Flour*, the Court reasoned that a no-strike obligation coterminous in application to the agreement to arbitrate is implied by the arbitration clause absent an explicit indication of an intention to the contrary. *Id.* at 382. The Court reasoned that the federal policy justifying the *Boys Markets* exception to the anti-injunction provisions of the Norris-LaGuardia Act where the collective bargaining agreement contains an express no-strike clause was equally valid where the no-strike obligation was implicit in the arbitration clause. *Id.* at 381-82. The Court recognized, however, that although "an arbitration agreement is usually linked with a concurrent no-strike obligation...the two issues remain analytically distinct." *Id.* at 382.

In *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397 (1976), the Court held that even where there is an express no-

---

any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment.

strike clause that might be violated by a strike, the *Boys Markets* exception to the anti-injunction provisions of § 4(a) of the Norris-LaGuardia Act does not permit the enjoining of a strike unless the underlying dispute is arbitrable under the collective bargaining agreement. The Court reasoned that when a strike is called over a nonarbitrable dispute, an injunction cannot be justified because the strike does not threaten or frustrate the arbitration process by breaching or evading the union's promise to submit dispute grievances to arbitration. *Id.* at 407-12. Even though in *Buffalo Forge* the Supreme Court held that the extent to which an explicit no-strike clause is enforceable by injunction under *Boys Markets* is coterminous with the scope of the arbitration clause contained in the collective bargaining agreement, the Court recognized that strikes not subject to injunction may still violate the explicit no-strike clause and that other remedies, such as damages, may be available. *Id.* at 410-11. *See International Union United Automobile, Aerospace & Agriculture Implement Workers v. Lester Engineering Co.*, 718 F.2d 818, 822 (6th Cir. 1983).

That the doctrine of coterminous interpretation in the context of *Boys Markets* and *Buffalo Forge* applies only to determining the permissibility of enjoining strikes and not to determining the scope of an explicit no-strike clause was further clarified in *Jacksonville Bulk Terminals, Inc. v. International Longshoreman's Association*, 457 U.S. 702 (1982). In *Jacksonville Bulk Terminals* the Court held that a strike called to protest the invasion of Afghanistan by the Soviet Union was not enjoinable under the *Boys Markets* exception to the Norris-LaGuardia Act's anti-injunction prohibition because the underlying dispute was plainly not arbitrable under the collective bargaining agreement. *Id.* at 721-22. Nevertheless, the Court stated that the issue of whether the strike violated the explicit no-strike clause contained in the collective bargaining agreement was a separate question from whether the strike was enjoinable. *Id.* at 721-22. The Court's holding is wholly incon-

sistent with Local 480's contention that under the doctrine of coterminous interpretation an express no-strike clause does not prohibit a strike over a nonarbitrable dispute. The Court's holding does illustrate, however, that where there is an express no-strike clause, strikes are enjoinable only if over an arbitrable matter.

The instant case does not implicate either of the contexts in which the doctrine of coterminous interpretation traditionally has been employed. Unlike *Lucas Flour* and *Gateway Coal*, the no-strike obligation is expressed in the collective bargaining agreement rather than implicit in contractually provided grievance and arbitration procedures. Unlike *Boys Markets* and its progeny, this case does not involve the issue of whether a federal court could have enjoined the continuation of the strike without running afoul of the anti-injunction provisions of § 4(a) of the Norris-LaGuardia Act. Because the simple question that confronts us is whether the express no-strike clauses contained in the national and supplemental agreements were violated by Local 480's strike, the doctrine of coterminous interpretation is inapplicable to this case. *United States Steel Corp. v. N.L.R.B.*, 711 F.2d 772, 777 (7th Cir. 1983); *Inland Steel Corp. v. N.L.R.B.*, 718 F.2d 1104 (7th Cir. 1983) (mem.).

The cases cited by Local 480 do not dictate a contrary conclusion. As Local 480 notes, language in *Delaware Coca-Cola Bottling Co. v. General Teamster Local 326*, 624 F.2d 1182 (3d Cir. 1980), does suggest that the doctrine of coterminous interpretation is applicable to the construction of any express no-strike clause. The Third Circuit, however, has declined to construe *Delaware Coca-Cola* as broadly as Local 480 urges. In *Pacemaker Yacht Co. v. N.L.R.B.*, 663 F.2d 455 (3d Cir. 1981), the court stated that "[t]he principle of coterminous interpretation, however, is not a rule of law, but merely a tool of contract interpretation...which 'must be applied to the facts of each case.' " *Id.* at 457-58 (citations omitted). The *Pacemaker Yacht* court declined to apply the doctrine of coterminous inter-

pretation based upon its reading of the contract as establishing a waiver of the right to strike that extends beyond the scope of the arbitration clause. *Id.* at 458-59.

In *N.L.R.B. v. Gould, Inc.*, 638 F.2d 159 (10th Cir. 1980), *cert. denied sub nom. Brown Boveri Electric Co. v. N.L.R.B.*, 452 U.S. 930 (1981), the court, after recognizing that it may be reasonable in some cases to infer that the parties intended an arbitration clause and an express no-strike clause in a collective bargaining agreement to be coterminous in scope, held that the particular no-strike clause at issue was so linked to the grievance-arbitration machinery provided in the agreement that the two clauses should be construed as having coterminous application. *See also N.L.R.B. v. C.K. Smith & Co.*, 569 F.2d 162 (1st Cir. 1977), *cert. denied*, 436 U.S. 957 (1978); *Gary Hobart Water Corp. v. N.L.R.B.*, 511 F.2d 284 (7th Cir.), *cert. denied*, 423 U.S. 925 (1975). Where the no-strike clause is independent from the arbitration and grievance procedure provisions, however, no principle of contract interpretation requires limitation of the scope of the no-strike clause to matters covered by the contractually provided arbitration and grievances procedures. *United States Steel, supra*, 711 F.2d at 777-78 *Cf. Gould, supra*, 638 F.2d at 164 & n.4 (extrinsic evidence permissible to show an intent that no-strike clause not limited to arbitrable disputes).

The question remains whether the strike in this case was prohibited by the general no-strike clauses contained in the national and supplemental agreements. We start from the proposition that employees may through the collective bargaining process waive various rights, including the right to strike. *Mastro Plastics Corp. v. N.L.R.B.*, 350 U.S. 270, 280 (1956); *N.L.R.B. v. Rockaway News Co.*, 345 U.S. 71, 80 (1953). Such a waiver, however, must be clear and unmistakable. *Kellogg Co. v. N.L.R.B.*, 457 F.2d 519, 525 (6th Cir.), *cert. denied*, 409 U.S. 850 (1972). We conclude from our review of the bargaining agreement that Local 480's waiver of its right to strike in this case was clear and unmistakable.

As an initial point, neither the language of the no-strike clauses nor any other contractual language limits the prohibition of strikes to strikes over arbitrable disputes. *Montana-Dakota Utilities Co. v. N.L.R.B.*, 455 F.2d 1088, 1093-94 (8th Cir. 1972); *United States Steel, supra,* 711 F.2d at 778. Additionally, the express language of the no-strike clause in article 8, § 2(a) of the national agreement not only prohibits strikes by Local 480 except in specific circumstances, but also prohibits lockouts by Ryder except in the same specified circumstances. Construing a similar clause as prohibiting strikes over nonarbitrable, as well as arbitrable, disputes, the court in *Pacemaker Yacht, supra,* 663 F.2d at 458-59, held that "[i]t is apparent that the no-strike pledge...was given in exchange for the Company's no-lockout pledge" rather than in exchange for a grievance and arbitration procedure. We think it no less apparent that the no-strike pledge here was given in exchange for the no-lockout pledge.

In reaching our conclusion that the no-strike pledge contained in the collective bargaining agreement was not limited to strikes over arbitrable disputes, we do not contend that the general no-strike clauses, read in isolation, suffice to waive the right to strike, regardless of the nature of the underlying dispute. *Mastro Plastics, supra,* 350 U.S. at 281; *W-I Canteen Service, Inc. v. N.L.R.B.*, 606 F.2d 738, 745 (7th Cir. 1979). Rather, we recognize that the no-strike clauses must be read in the light of the contract as a whole and in the light of the law relating to the contract when it was made. *Mastro Plastics, supra,* 350 U.S. at 279; *W-I Canteen Service, supra,* 606 F.2d at 745; *Kellogg Co., supra,* 457 F.2d at 524-25.

Read in the light of the contract as a whole, the no-strike clauses clearly apply to disputes over nonarbitrable, as well as arbitrable, matters. Articles 9 and 28 provide, respectively, that sympathy strikes to honor a primary picket line are permissible and that action taken in sympathy with affiliated unions does not violate the terms of the collective bargaining agreement. Ar-

ticle 27 permits a signatory union to resort to any lawful economic resource, including strikes, in support of its request for contract revisions in the event that the agreement is opened for renegotiation prior to the agreement's expiration. On their face, these articles permit Local 480 to engage in strikes over matters not subject to the dispute settlement mechanisms contained in the agreement. If, as Local 480 contends, the no-strike clauses prohibit strikes only over disputes subject to the dispute settlement mechanisms contained in the agreement, these articles would be superfluous. Although collective bargaining agreements are not necessarily to be interpreted according to the general principles of contract construction, *e.g., Kellogg Co., supra,* 457 F.2d at 524, even in the context of a labor contract, language must be interpreted so that it is not rendered meaningless. *Id.* at 524-25; *Pacemaker Yacht, supra,* 663 F.2d at 459; *Retail Clerks International Association Local No. 455 v. N.L.R.B.,* 510 F.2d 802, 805-06 & n.15 (D.C. Cir. 1975). To give effect to the language of articles 9, 27, and 28, the no-strike clauses must be interpreted as prohibiting strikes not falling within one of the expressly provided exceptions, regardless of whether the underlying dispute is arbitrable. *Pacemaker Yacht, supra,* 663 F.2d at 459; *W-I Canteen Service, supra,* 606 F.2d at 745.

Read in the light of the applicable law, the no-strike clauses need not be construed narrowly to prohibit strikes only over arbitrable disputes. As the court in *Unites States Steel, supra,* recognized, a broad construction of a no-strike clause may in appropriate circumstances support the federal policy of furthering collective bargaining as a means of preventing the interruption of work. 711 F.2d at 780. Indeed, to hold that no-strike clauses must be construed as prohibiting only strikes over arbitrable issues would undermine the fundamental premise of freedom of contract on which federal labor policy is based by undercutting management's ability to obtain "an across-the-board no-strike clause and labor's ability to gain concessions in return for such a pledge." *Pacemaker Yacht, supra,* 663 F.2d at 460.

Because we conclude that the parties intended to prohibit strikes not falling within one of the expressly provided exceptions in the collective bargaining agreement regardless of whether the underlying dispute is arbitrable, and because such a conclusion is consistent with federal labor policy, we concur in the district court's holding that Local 480's strike violated the no-strike provisions of the collective bargaining agreement.

III. Conclusion

As stated above, the panel upheld the district court's handling of the issue of damages. 705 F.2d at 858. We adopt the panel's analysis on this issue.

In sum, we affirm the judgment of the district court.

KEITH, Circuit Judge, with whom Judges EDWARDS and JONES join, dissenting. I respectfully disagree with the majority's holding in this case. The general no-strike clauses contained in the national and supplemental agreements did not prohibit the strike by Ryder's employees. In my view, the majority has misperceived the issue that must first be addressed by the Court.

Ryder argued and the district court concluded that the express language of the no-strike clause precluded judicial interpretation and unambiguously prohibited all strikes. By addressing the issue in the manner, the majority completely misses the mark. A contractual prohibition against work stoppage does not invalidate the right to conduct a work stoppage to protest matters which cannot be resolved under contractual grievance procedures. A work stoppage precipitated by a non-arbitrable dispute would not come within the purview of the contract and would not constitute a breach of the no-strike clause. Therefore, the question that must be addressed is whether the

nature of the work stoppage was covered by the contract. The district court's failure to address this threshold question and its failure to make corresponding findings of fact constituted reversible error. My distinguished brethren of the majority have erred, in my view, in deciding to the contrary.

I.

The majority recognizes that the right to strike or engage in work stoppages, guaranteed by Section 7 of the National Labor Relations Act, 24 U.S.C. § 157, may be surrendered or waived by an express provision in the collective bargaining agreement. *Mastro Plastics Corp. v. NLRB,* 350 U.S. 270, 280 (1956).

Certain statutory rights such as the right to strike "are conferred on employees collectively to foster the process of bargaining and properly may be exercised or relinquished by the union as a collective bargaining agent to obtain certain economic benefits for union members." *Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 51 (1974). The majority goes astray in failing to recognize that the promise not to strike, is the quid pro quo for the employer's promise to submit grievances to arbitration. *Boys Markets v. Retail Clerks,* 398 U.S. 235, 248 (1970). This quid pro quo theory is the basis for the concept of coterminous interpretation. That is, the right to strike may be bargained away in exchange for an employer's promise to bestow certain benefits such as terminal arbitration. Coterminous interpretation refers to the notion that if the subject matter of the strike is arbitrable, then the strike violates the no-strike clause. *Delaware Coca-Cola v. General Teamsters Local Union,* 624 F.2d 1182, 1185 (3d Cir. 1980). Correlatively, the obligation to refrain from striking is not violated when the subject of the strike is non-arbitrable. *Id.*

The district court erred by not applying the coterminous interpretation theory to determine whether the strike violated the no-strike clause in the parties' agreement. This theory is supported by a wealth of case law *See Teamsters Local 174 v. Lucas*

Flour, 369 U.S. 95, 106 (1962) ("a no-strike clause agreement [will not be] implied beyond the area which it has been agreed will be exclusively covered by compulsory terminal arbitraton"); *Gateway Coal Co. v. United Mine Workers of America,* 414 U.S. 368, 382 (1974) ("[a]bsent an explicit expression of an intention to the contrary,...the agreement to arbitrate and the duty not to strike should be construed as having coterminous application"); *Buffalo Forge v. United States Steelworkers,* 428 U.S. 397, 407 (1976) ("the quid pro quo for the employer's promise to arbitrate was the union's obligation not to strike over issues that were subject to the arbitration machinery"). *See also, Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Assoc.,* 457 U.S. 702 (1982); *Delaware Coca-Cola, supra; NLRB v. Southern California-Edison Co.,* 646 F.2d 1352 (9th Cir. 1981); *Irvin H. Whitehouse & Sons v. NLRB,* 659 F.2d 830 (7th Cir. 1981).

The majority's attempt to distinguish these cases on grounds that they involved either implied no-strike clauses or were actions in which the parties were seeking injunctive relief is overly simplistic. The Third Circuit in *Delaware Coca-Cola v. General Teamsters Local Union,* 624 F.2d 1182 (3d Cir. 1980) recognized that "[r]elevant Supreme Court precedent, as shown by both *Buffalo Forge* and *Mastro Plastics* supports the conclusion that a broadly worded no-strike clause does not waive the right to strike over non-arbitrable matters that are not covered by the striker's contract." 624 F.2d at 1187. Subsequent Third Circuit decisions have not retreated from this position. *Pacemaker Yacht Co. v. NLRB,* 663 F.2d 455 (3d Cir. 1981), a case which the majority inexplicably points to as digressing from the holding in *Delaware Coca-Cola,* goes no further than to state that "the principle of coterminous interpretation, is not a rule of law but merely a tool of contract interpretation...which must be applied to the facts of each case." *Id.* at 457-58. I wholeheartedly agree. Indeed, it is the district court's failure to apply this interpretative tool to the facts of this case that mandates our dissent.

The vast weight of authority indicates that an express waiver of the right to strike cannot be read in a vacuum. A no-strike provision must be interpreted in light of the concomitant duty to arbitrate. It would be inimical to fundamental principles of labor relations to prohibit strikes in protest of matters which cannot be resolved through arbitration.

II.

Coterminous interpretation of the agreement between the parties would have led to a correct resolution of this case. If the windshield dispute was the cause of the work stoppage, the strike was clearly illegal since the responsibility for cleaning windshields is a matter governed by the contract and subject to arbitration. However, if the work stoppage was caused by the arrest of union men, the strike was not illegal since the arrest of employees is a matter which does not concern the contractual relationship and cannot be resolved through grievance procedures.

Evidence presented before the district court indicated that the cause of the work stoppage was the arrest and jailing of union members. James Barton, Ryder Area Transportation Manager, testified that union representatives informed him "if we did not get them out of jail that they were going to strike on us." Barton also testified that union representatives stated "the police in St. Louis caused it [the strike]." This testimony was buttressed by the introduction of the following telegram the Union sent to Ryder: "Reason for stoppage was the company jailed two of its black employees, members of this organization, for no reason." A factual determination of the reason for the strike was critical to a finding of liability. The district court's failure to make such an inquiry constituted reversible error.

Conclusion

The majority has missed the mark in my opinion, by failing to remand this case to the district court for clarification of the reasons for the strike. Their decision sets a dangerous precedent which, if followed, will work a grave injustice against union members. A rule of law that subsumes all the union's rights under a general no-strike provision can only promote unequal bargaining power and encourage labor instability. It is for these reasons that I respectfully dissent.

U. S. CONSTITUTION

AMENDMENT 1

Religious and political freedom. — Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

AMENDMENT 4

Unreasonable searches and seizures. — The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

28 U.S.C. §46(c)

§ 46. Assignment of judges; panels; hearings; quorum

(c) Cases and controversies shall be heard and determined by a court or panel of not more than three judges (except that the United States Court of Appeals for the Federal Circuit may sit in panels of more than three judges if its rules so provide), unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in regular active service. A court in banc shall consist of all circuit judges in regular active service, or such number of judges as may be prescribed in accordance with section 6 of Public Law 95-486 (92 Stat 1633), except that any senior circuit judge of the circuit shall be eligible to participate, at his election and upon designation and assignment pursuant to section 294(c) of this title and the rules of the circuit, as a member of an in banc court reviewing a decision of a panel of which such judge was a member.

28 U.S.C. 2077(a)

§ 2077. Publication of rules; advisory committees

(a) The rules for the conduct of the business of each court of appeals, including the operating procedures of such court, shall be published. Each court of appeals shall print or cause to be printed necessary copies of the rules. The Judicial Conference shall prescribe the fees for sales of copies under section 1913 of this title, but the Judicial Conference may provide for free distribution of copies to members of the bar of each court and to other interested persons.

29 U.S.C. §185(a)

§ 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

RULE 14, SIXTH CIRCUIT

Rule 14. En Banc—Required Statement for Rehearing En Banc

(a) Determination of Causes by the Court En Banc. A suggestion for a hearing or rehearing *en banc* may be made as provided in Rule 35 of the Federal Rules of Appellate Procedure or by any judge of the court in active service on his own motion. A court *en banc* shall consist only of all circuit judges in regular active service. The effect of the granting of a hearing *en banc* shall be to vacate the previous opinion and judgment of this court, to stay the mandate and to restore the case on the docket as a pending appeal.